



STATE MINING & GEOLOGY BOARD
DEPARTMENT OF CONSERVATION
STATE OF CALIFORNIA



Publication Date: January 27, 2006

NOTICE OF PUBLIC HEARING

THE STATE MINING AND GEOLOGY BOARD

Will conduct a Public Hearing on:

Wednesday, February 8, 2006

6:30 P.M.

**El Roble Intermediate School
665 North Mountain Avenue
Claremont, California**

AGENDA

The State Mining and Geology Board (SMGB) will conduct a PUBLIC HEARING on Wednesday, February 8, 2006, pursuant to the provisions of the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code Sections 2710 et seq.) to receive comments from the public and other interested parties on the following designation appeal submittal:

**IN THE MATTER OF AN APPEAL BY VULCAN MATERIALS COMPANY,
REGARDING A PROPOSED SURFACE MINING PERMIT AND
RECLAMATION PLAN WITHIN A DESIGNATED MINERAL RESOURCE
AREA IN THE CITY OF CLAREMONT**

**(SMARA; Public Resources Code Section 2710, et seq.); specifically
Sections 2770(e)(1), 2774.4 (a)(6), and 2775;
California Code of Regulations, Sections 3621 and 3628(a).**

[NOTE: Times are approximate. The chairman may alter the hearing start time or agenda item order during the meeting]

- I. Call to Order (Jones)**
- II. Roll Call**

III. Identification of the Record

The record before the Board at this public hearing shall be the administrative record submitted pursuant to Sections 3626 and 3628 of this article. Ref: *Section 2775, Public Resources Code*.

ADMINISTRATIVE RECORD: On August 22, 2005, The State Mining and Geology Board (Board), received three certified copies of the administrative record pertaining to Vulcan Materials Company, Western Division, (Vulcan) Intent to Appeal the City of Claremont (City) alleged failure to process a surface mining permit and reclamation plan within a Designated Mineral Resource Area. On October 14, 2005, upon review and pursuant to CCR Title 14, Division 2, Chapter 8, Subchapter 1, Article 4, Section 3628, the Executive Officer concluded that the administrative record was considered complete.

BACKGROUND: The proposed project site is within the jurisdictional boundaries of the City of Claremont and is situated on land referred to as the Pomona Valley Protective Association (PVPA) Property. The subject PVPA Property consists of approximately 214 acres at the north end of the larger San Antonio Spreading Grounds that straddle the boundary between the City of Claremont and the City of Upland immediately south of the San Antonio Dam. The PVPA has granted a mining lease on 214 acres of the Spreading Grounds to Vulcan.

In September 1985 the SMGB adopted in regulation (14 CCR §3550.7, filed 12/3/86) the area encompassing the proposed project site as a Regionally Significant Mineral Resource Area (Sector B-1, *Designation of Regionally Significant Construction Aggregate Resources in the Claremont-Upland and San Bernardino Production-Consumption Regions*, 1985, SMARA File Number 5). Sector B-1 is zoned MRZ-2 (significant mineral deposits) for Portland Concrete Cement (PCC) grade aggregate, and is mostly coincident with the San Antonio Spreading Grounds. The land within the proposed project area is not zoned for surface mining activities.

VULCAN'S APPEAL:

Application submittal: On March 15, 2004, Vulcan submitted an application to the City for a General Plan amendment and a zone change to allow sand and gravel extraction on the land within the proposed project area, as well as for a Conditional Use Permit to mine. On April 22, 2004, City planning staff rejected Vulcan's application as incomplete, and indicated numerous areas in the application that required additional analysis, supplementation, and correction.

After consultations with City staff, Vulcan resubmitted a modified application that requested a text change in the Land Use Development Code (LUDC) to allow surface mining activities in the proposed project area. This request for a text change in the LUDC was in lieu of an amendment to the General Plan and a zone change. The land within the San Antonio Spreading Grounds is



zoned Open Space (OS), and mining is not a permitted activity within this zoning. The requested text change in the LUDC would provide for mining in the OS zone. Also included in the modified application were requests for a mining permit and reclamation plan approval. The modified application was considered complete by City planning staff in December 2004.

City Planning Commission Decision: The City Planning Commission conducted a public hearing on February 1, 2005, on Vulcan's application to allow for surface mining in the proposed project area. The Planning Commission rejected changing the text in the LUDC to allow mining as a permitted land use, thus halting consideration of the applicant's requests for a mining permit and a reclamation plan approval.

Vulcan's appeal: Vulcan appealed the Planning Commission's action to the City Council. The Council, in public session on February 22, 2005, determined to not accept the appeal (an option available to the Council), thereby letting stand the Planning Commission's decision. Vulcan timely filed its Intent to Appeal with the SMGB within the 15 days of exhausting its rights to appeal in accordance with the procedures of the City of Claremont. Vulcan exhausted its appeal rights with the City on February 22, 2005; the Intent to Appeal was received at the SMGB office on March 9, 2005 (15 days).

Vulcan petitioned the SMGB to take jurisdiction for the initial Intent to Appeal under three separate statutes within the Surface Mining and Reclamation Act (SMARA; Public Resources Code (PRC) § 2710, et seq.); specifically, these sections are PRC §2770(e)(1), PRC §2774.4 (a)(6), and PRC §2775.

IV. Public Hearing [Possible Action]

The appellant, the lead agency, the project proponent (when not the same person as the appellant), and the public are invited to make statements at the hearing regarding the decision of the lead agency:

Individuals are responsible for presenting their own reports/statements at this hearing.

Hearing Procedures-Sequence: The public hearing should normally proceed in the following manner:

- (1) Identification of the record;
- (2) Statements on behalf of the appellant;
- (3) Statements on behalf of the lead agency;
- (4) Statements on behalf of the project proponent (when not the same person as the appellant);
- (5) Statements on behalf of the public;
- (6) Rebuttal on behalf of the appellant; and



(7) Motion to close the public hearing.

(a) Notwithstanding the above, the Chairman or the Chairman's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(b) The Chairman or the Chairman's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements must be submitted to the Board at least fifteen days prior to the hearing.

(c) The public hearing shall be recorded either electronically or by other convenient means. *Ref. Section 2755, Public Resources Code.*

V. Close Public Hearing

VI. SMGB Discussion and Possible Action. (The SMGB may defer taking action on this item.)

VII. Adjournment

Staff Report

Action (Pending)

For questions regarding this Agenda, please contact the SMGB office by telephone at (916) 322-1082, or by facsimile at (916) 445-0738. This Notice and associated staff reports can be accessed electronically at the SMGB's Internet web site at: <http://www.consrv.ca.gov/smgb/> (note: Agenda reports should be available electronically approximately one week prior to the scheduled meeting/hearing date).

The SMGB requests that all lengthy comments be submitted in writing in advance of the meeting date. To ensure that the SMGB has the opportunity to fully preview written material, comments should be received in the SMGB office no later than 15 days prior to the scheduled meeting date, and must indicate the Agenda Item to which it relates. For written material in excess of two pages, or that contains large maps, photos, foldouts, or other documents requiring special handling, please submit 12 copies. The SMGB will not reproduce these types of documents. Comments on Agenda Items will be accepted by electronic mail, and are subject to the same conditions set forth for other written submissions.

NOTES

A. GENERAL STATEMENT

The Board's general authority is granted under the Public Resources Code, which requires all Board members to "represent the general public interest". Board membership consists of nine individuals appointed by the Governor, and confirmed by the Senate. Each member serves for four years in staggered terms, and each must have a demonstrated specialty in either geology, seismology, mining



engineering, hydrogeology, the environment, mineral resources, landscape architecture, or government.

The Board has specific responsibilities under the following acts:

Alquist-Priolo Earthquake Fault Zoning Act -- Under this Act, the Board is authorized to represent the State's interests in establishing professional practice guidelines and standards for geological investigations and reports produced by the California Geological Survey, public sector agencies, and private practitioners, and to develop specific criteria through regulations that shall be used by affected local jurisdictions in complying with the provisions of the Act so as to protect the health, safety and welfare of the public.

This Act (Public Resources Code, Chapter 7.5, §2621 through §2630) is intended to provide policies and criteria to assist cities, counties and state agencies in the exercise of their responsibilities to prohibit the location of developments and structures for human occupancy across the trace of active faults as defined by the Board. Further, it is the intent of this Act to provide the citizens of the State with increased safety and to minimize the loss of life during and immediately following earthquakes by facilitating seismic retrofitting to strengthen buildings, including historical buildings, against ground shaking.

Seismic Hazards Mapping Act -- Under this Act, the Board is authorized to provide policy and guidance through regulations for a statewide seismic hazard mapping and technical advisory program to assist cities, counties, and state agencies in fulfilling their responsibilities for protecting the public health and safety from the effects of strong ground shaking, liquefaction or other ground failure, landslides and other seismic hazards caused by earthquakes, including tsunami and seiche threats.

The Seismic Hazards Mapping Act (Public Resources Code Chapter 7.8, §2690 through §2699.6) establishes the authority to provide programs to identify and map seismic hazard zones in the State in order for cities and counties to adequately prepare the safety element of their general plans and to encourage land use management policies and regulations to reduce and mitigate those hazards so as to protect public health and safety.

Surface Mining and Reclamation Act of 1975 -- The extraction of minerals in a responsible manner is essential to the continued economic well-being of the State and to the needs of society, and the thoughtful reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.

Under various statutes, the Board is authorized to represent the State's interests in the development, utilization, and conservation of the State's mineral resources, the reclamation of mined lands, and Federal matters pertaining to surface mining within the State.

The Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code §2710 through §2797) provides a comprehensive surface mining and reclamation policy with the regulation of surface mining operations to assure that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. SMARA, also, encourages the production, conservation, and protection of the State's mineral resources. (Public Resources §2207 provides for the annual reporting requirements of this statute, under which the Board also is granted authority and obligations).

B. **HEARING PROCEDURES**

Regulations governing the hearing procedures of the State Mining and Geology Board can be found under Articles 4, 5, 7, 11.5, 12, and 14, of Title 14, Division 2, Chapter 8, Subchapter 1, of the California Code of Regulations. These procedures can be accessed at the SMGB internet web site at: <http://www.consrv.ca.gov/smgb/>



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Unless otherwise specified in the public notice for a specific item, the SMGB wishes to limit oral presentations from all parties to three (3) minutes or less per individual depending on time constraints. Interested persons should submit to the SMGB office at 801 K Street, Sacramento, California, 95814, twelve (12) written copies of all comments, technical reports, and other material concerning any matters on the Agenda at least fifteen (15) days prior to the hearing date. This written material will be provided to the SMGB along with the full agenda materials. In addition, persons submitting written comments and other materials should be present at the SMGB meeting and be available for questions.

Oral comments that are duplicative of written comments should be limited to a summary of the previously submitted written materials. The SMGB reserves the right to refuse to accept any late-submitted written materials, absent a proper showing that information is available which was not available at the time the written materials were submitted.

(1) Hearings Pursuant to 14 CCR 3675 et seq., 3650 et seq., and 3680 et seq.:

Testimony and comments presented at hearings need not conform to the technical rules of evidence provided that the testimony and comments are reasonably relevant to the issues before the SMGB. Testimony or comments that are not reasonably relevant, or that are repetitious, may be excluded by the SMGB. Cross-examination may be allowed by the SMGB Chair as necessary for the SMGB to evaluate credibility of factual evidence or the opinions of experts. Video taped testimony by witnesses who are not present at the hearing will not be accepted unless such testimony was subject to cross-examination by all designated parties¹.

During the hearing, participants will be determined to be either "designated parties" or other "interested persons." Only designated parties may seek permission from the SMGB Chair to cross-examine witnesses. Interested persons may not cross-examine witnesses, but may ask the SMGB to clarify testimony. Designated parties automatically include the SMGB and any person to whom an Order is directed. All other persons wishing to testify or provide comments are interested persons.

For any hearing, the SMGB Chair will allocate time for each party to present testimony and comments and to question other parties if appropriate. Interested parties generally will be allowed three (3) minutes for their comments. Where speakers can be grouped by affiliation or interest, such groups will be asked to select a spokesperson. The SMGB Chair may allocate additional time for rebuttal or for a closing statement. Time may be limited because of the number of persons wishing to speak on an item, or the number of items on the SMGB's Agenda, or for other reasons.

All persons testifying must state their name, address, and affiliation. The order of testimony for hearings generally will be as follows, unless modified by the SMGB Chair:

- Identification of the Record
- Statements on behalf of the Petitioner / Appellant
- Statements on behalf of the Lead Agency or the Director
- Statements on behalf of the Public
- Rebuttal and closing statements on behalf of the Petitioner / Appellant
- Rebuttal and closing statements on behalf of the Director
- Motion to Close the Public Hearing

¹ This does not preclude the use of videotape to present graphic images, provided that the person who took the videotape is available for questioning and the presentation conforms to time limits imposed on all speakers; this is intended to apply to spoken testimony of witnesses who are not available for cross-examination at the hearing.

² Closing statements shall be for the purpose of summarization and rebuttal, and are not to be used to introduce new evidence or testimony, or to restate direct testimony.



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- Deliberation and voting by the SMGB, including SMGB examination of parties.

After considering evidence, testimony, and comments, the SMGB may choose to adopt, modify, or deny an order regarding a proposed agenda item. All SMGB files, exhibits, and Agenda material pertaining to the items on the Agenda are made a part of the record. Persons wishing to introduce item exhibits (i.e. maps, charts, photographs) must leave them with the SMGB Secretary and must provide sufficient copies for distribution to the SMGB, designated parties, and interested persons.

C. HEARING RECORD

Material presented to the SMGB as part of testimony that is to be made part of the record must be left with the SMGB. This includes photographs, slides, charts, diagrams, written testimony, etc. All SMGB files pertaining to the items on this Agenda are hereby made a part of the record submitted to the SMGB by its staff for consideration prior to action on related items.

D. PROCEDURAL INFORMATION

A Closed Session may be called by the Chair to discuss litigation and other privileged attorney-client communications by authority of Government Code §11126(e)(1) and Sacramento Newspaper Guild v. Sacramento County board of Supervisors [1968] 266(b)CAL.APP.2nd.41; basis of "litigation" exception is the attorney-client privilege.

The SMGB is governed by the Bagley-Keene Open Meeting Act that requires the SMGB to (1) publish an Agenda at least ten days in advance of any meeting; (2) describe in the Agenda specific items to be transacted or discussed; and, (3) refuse to add an item after the Agenda is published.

A quorum of the members of the SMGB may recess for lunch; however, no business will be discussed except to the extent of Closed Sessions as announced at the meeting.

Agenda items are subject to postponement. Interested and affected persons may contact the SMGB office in advance of the meeting day for information on the status of any Agenda item.

Speaker Cards: All persons desiring to address the SMGB are required to fill out a speaker card. Cards normally are provided near the entrance to the meeting room. Please fill out a separate card for each item on which you intent to speak, and present it to the SMGB Secretary prior to the item being heard by the SMGB.

E. AVAILABILITY OF EXECUTIVE OFFICER'S REPORT AND AGENDA MATERIAL

Persons are invited to visit the SMGB web site at <http://www.consrv.ca.gov/smgb> to view the Executive Officer's Report and other Agenda material and reports generated by the SMGB. These documents will be available for viewing approximately one week prior to the scheduled SMGB meeting. A copy can, also, be obtained by contacting the SMGB office. A public copy of SMGB documents is available at all meetings. Non-SMGB generated documents and materials are available for viewing at the SMGB office during public business hours (9:00 A. M. to 4:00 P. M.) Monday through Friday (except holidays).

F. PRESENTATION EQUIPMENT

Providing and operating projectors and other presentation aids are the responsibilities of the speakers. Some equipment may be available at the SMGB meeting; however, the type of equipment available will vary depending on the meeting location. Owing to software and hardware compatibility issues, provision and operation of laptop computers and projectors for presentations generally will be the responsibility of the individual speakers. To ascertain the availability of presentation equipment, please contact the SMGB office at least five (5) working days prior to the meeting.

G. ACCESSIBILITY



SMGB meetings are open to the public and are held in barrier free facilities in accordance with the Americans with Disabilities Act. For additional information or assistance, contact the SMGB office.

H. PAGERS AND CELL PHONES

For the listening comfort of others attending these meetings, audible alarms in pagers, cell phones, or other electronic devices during Board and Committee meetings must be turned off. You may be asked to leave the meeting if your device produces an audible signal during the meeting.

I. PROFESSIONAL REPORTS AND DOCUMENTS

Professional reports, documents, calculations, plans, specifications, maps, cross sections, boring or trench logs, and diagrams, hereafter collectively referred to as documents, which must, under applicable law, regulation, or code, be prepared by or under the supervision of licensed professionals will not be accepted or considered by the State Mining and Geology Board unless at least one copy of the document bears an original signature, stamp impression or seal, and date affixed by the author in accordance with applicable law and regulation. Unless otherwise directed or agreed in advance, all professionally prepared documents included in Board, or Board committee, meeting packages or presented to the Board in a meeting are to be in final form and must be signed, stamped or sealed, and dated in accordance with applicable law and regulation.

